



Access Granted: Preparing for New York's Personnel Records Access Law

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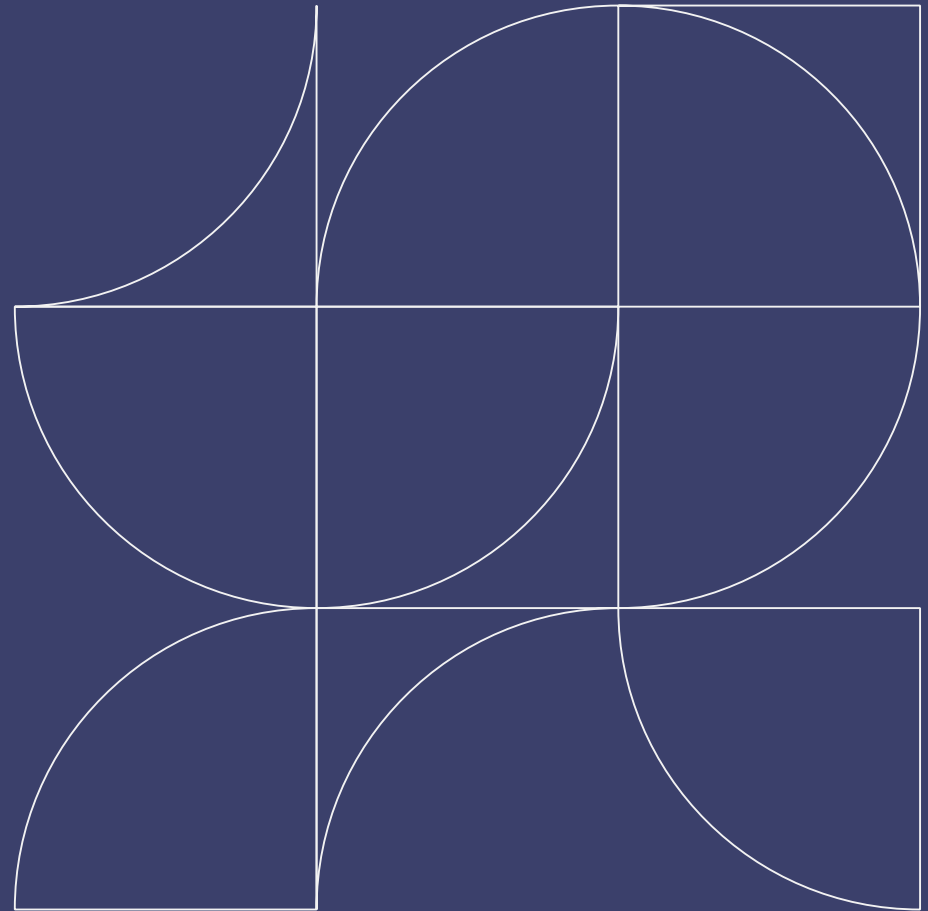
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Agenda

- 1 | Coverage and Scope
- 2 | Access, Notice, and Retention Rules
- 3 | Employee Challenges and Enforcement
- 4 | New York vs. The National Landscape
- 5 | Expected Amendments and Open Questions
- 6 | Practical Compliance and Documentation Steps

Coverage and Scope



The Compliance Clock

5

Business days to
provide a copy

10

Days for qualifying
notice

2

Routine reviews per
calendar year

3

Years after
termination to retain

A review caused by placement of negative information does not count toward the twice-per-year limit.

Who Is Covered?

- “Employee” includes current and former employees.
- “Employer” includes individuals, corporations, partnerships, labor organizations, unincorporated associations, and other legal businesses.
- The definition also includes governmental entities, public employers, commercial entities, and employer agents.
- The statute contains no express employee-count threshold.
- For multistate employers, the statute does not clearly define the New York nexus required for employee, employer, or record coverage.

“Personnel Record” Is Broader Than the Personnel File

Functional Definition

- Record kept by an employer that identifies an employee
- Used or has been used, or may affect or be used relative to the employee’s qualifications for employment
- Also covers promotion, transfer, additional compensation, or disciplinary action

Practical Implications

- The analysis turns on content and use, not solely storage location
- A formal HR file is not the statutory boundary
- Informal and deliberative materials still require a fact-specific review
- Records held by certain contracted service providers may qualify

Clearly Identified Records and Fact-Specific Categories

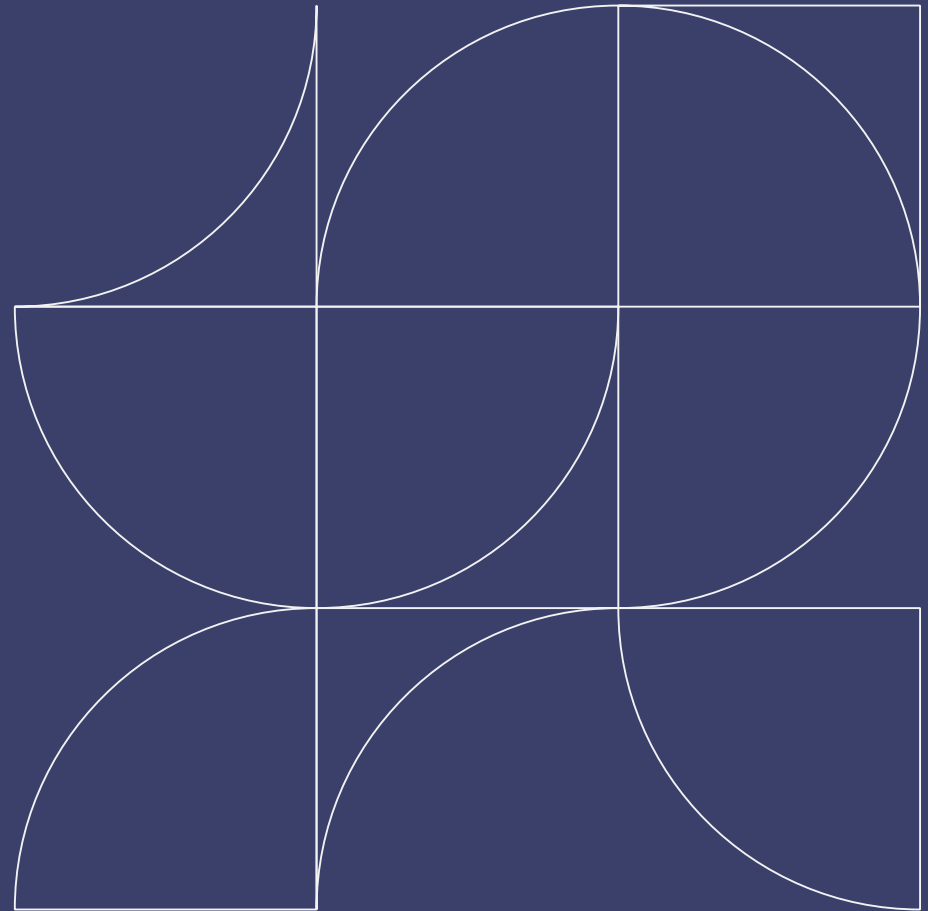
Expressly Identified

- Name, address, date of birth, job title and description
- Pay and other compensation; start date
- Applications, résumés, and covered employment inquiries
- All performance evaluations and evaluation documents
- Written warnings; probationary periods; signed waivers
- Dated termination notices and disciplinary documents

Require Fact-Specific Review

- PIPs and corrective-action records
- Manager notes, emails, and Teams messages
- Draft evaluations and calibration materials
- Employee-relations memoranda
- Investigation findings and underlying materials
- Records maintained in HRIS, payroll, case-management, or vendor systems

Access, Notice, and Retention Rules



Third-Party Records, Privacy, and Privilege

- The definition includes covered personnel records held by a contractor that has agreed to keep or supply personnel records for the employer.
- Confirm relevant vendors can search, export, and return records promptly.
- Exclude personal information about another person if disclosure would constitute a clearly unwarranted invasion of privacy.
- Review responsive materials for privilege, confidentiality, and appropriate redactions.
- Independent legal obligations may require medical, accommodation, leave, background-check, and other protected records to be maintained separately.

Retention, Vendors, and Record Governance

- Retain the complete personnel record throughout employment and for three years after termination.
- Treat three years as the statutory minimum for the covered personnel record, not a universal destruction rule.
- Other legal, contractual, or litigation-preservation duties may require longer retention.
- Inventory third-party systems and contractual arrangements involving covered records.
- Test search, export, redaction, and turnaround capabilities before the effective date.

Negative Information: Trigger and Notice Workflow

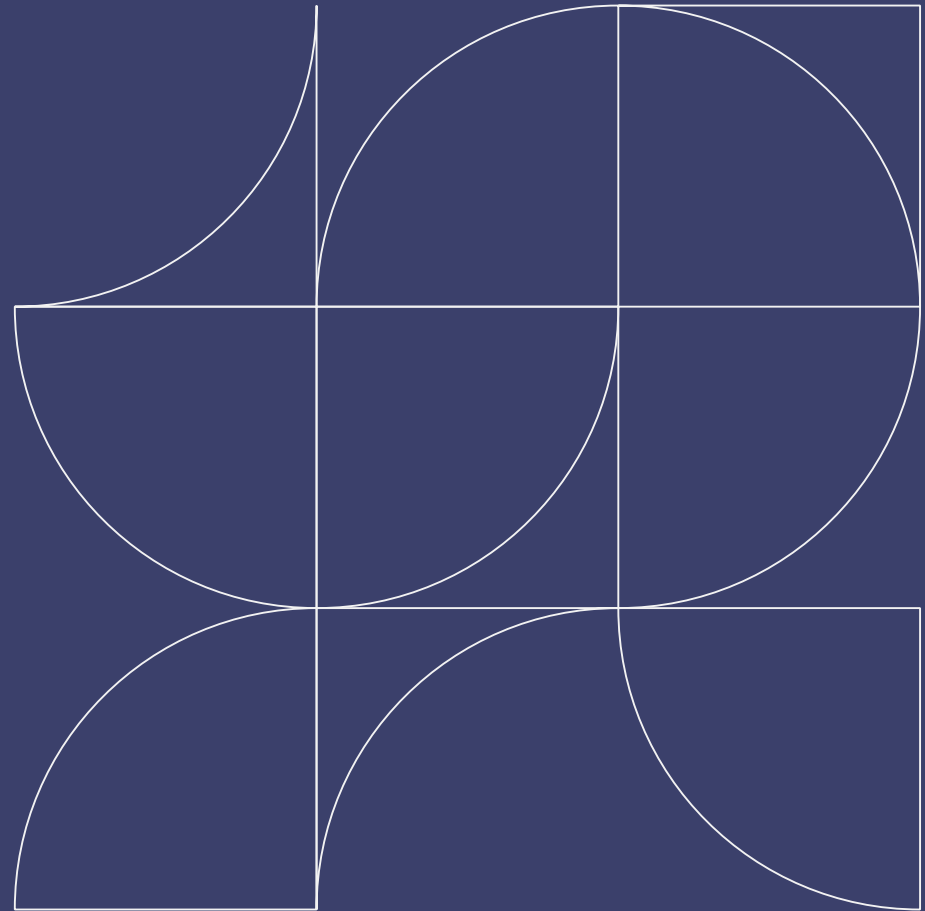
Enacted Trigger

- Information is placed in the employee's personnel record
- Information is, has been used, or may be used to negatively affect qualifications for employment, promotion, transfer, additional compensation, or the possibility of discipline
- Notice is independent of an employee access request

Unresolved Questions and Escalation

- “Negative information” and “placing” are not defined
- Preliminary HR consultations and mixed developmental feedback present difficult questions
- Highest-risk candidates include formal written warnings, negative evaluations, and disciplinary documents
- PIPs require review based on substance and use
- HR or Legal should decide uncertain categories consistently

Employee Challenges and Enforcement



Employee Challenges and Rebuttals

- Employer and employee may agree to correct or remove disputed information.
- If no agreement is reached, the employee may submit a written statement explaining the employee's position.
- The statement becomes part of the personnel record.
- While the disputed material remains in the file, the employee's statement must accompany it when the material is transmitted to a third party.
- Other contractual, personnel, or judicial avenues may be available to seek expungement of information the employer knew or should have known was false.
- Establish a process for linking rebuttals to disputed records across paper and electronic systems.

Enforcement and Retaliation: Two Different Risks

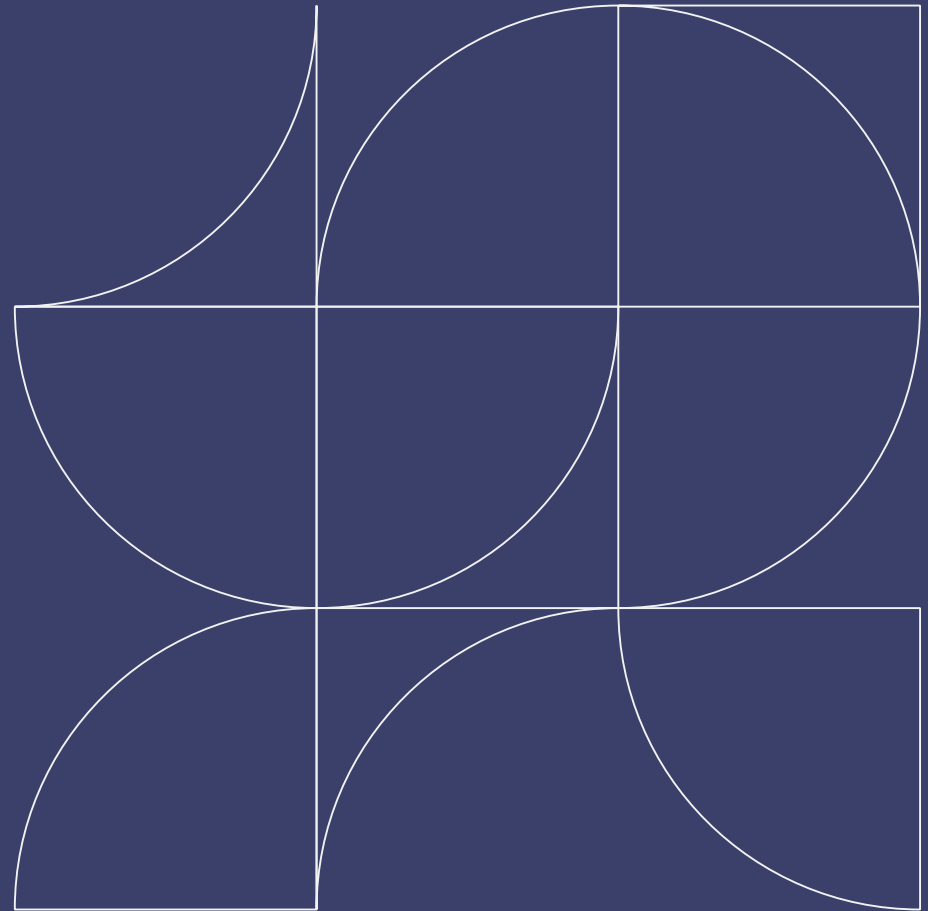
Direct § 210-b Enforcement

- Attorney General enforcement
- Fine of \$500 to \$2,500 per violation
- No express general private damages action for ordinary access, notice, production, or retention violations
- Substantive noncompliance still may affect litigation, credibility, and employee-relations risk

Separate Retaliation Exposure

- The statute expressly prohibits retaliation for exercising rights under the law
- Requests, rebuttals, and compliance complaints should be treated as protected activity
- For private-sector employees, retaliation may support a civil action under Labor Law § 215
- Close timing between protected activity and adverse action requires careful review

New York vs. The National Landscape



States Providing Employees Access to Personnel Files or Records

20 jurisdictions, including New York

Alaska • California • Colorado • Connecticut

Delaware • Illinois • Iowa • Maine

Massachusetts • Michigan • Minnesota • Nevada

New Hampshire • New York • Oregon • Pennsylvania

Rhode Island • Virginia • Washington • Wisconsin

The scope and mechanics of these laws vary significantly by jurisdiction.

Massachusetts: The Closest Analogue, Not an Identical Law

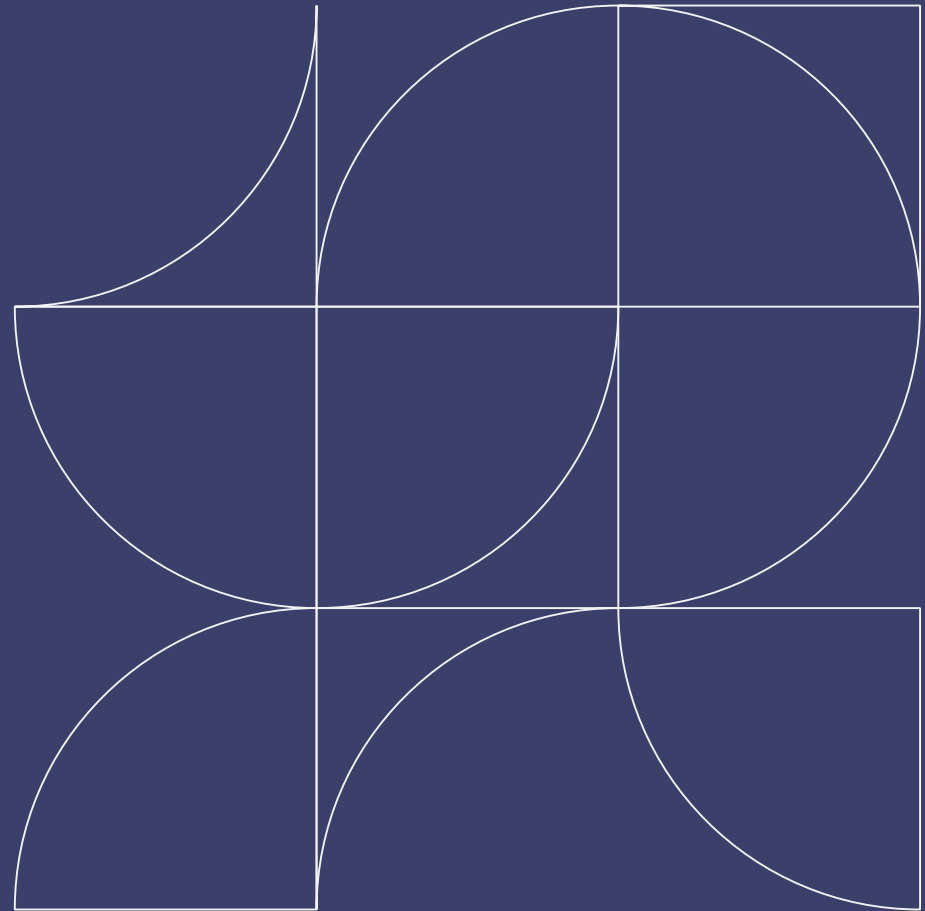
Key Similarities

- Broad functional definition of personnel record
- Five-business-day Massachusetts production period
- Separate ten-day negative-information notice concept
- Employee rebuttal rights and post-termination retention

Meehan v. Medical Information Technology, Inc.

- Massachusetts SJC (2021)
- At-will employee alleged termination for filing a statutory rebuttal
- Court held the rebuttal right could support a public-policy wrongful-discharge claim
- New York separately contains express anti-retaliation language

Expected Amendments and Open Questions



Expected Chapter Amendment

Governor's Approval Memorandum

- Acknowledges ambiguities in the enacted law
- States that the Governor reached an agreement with the Legislature to pursue clarifying amendments
- The approval memorandum is not operative statutory text

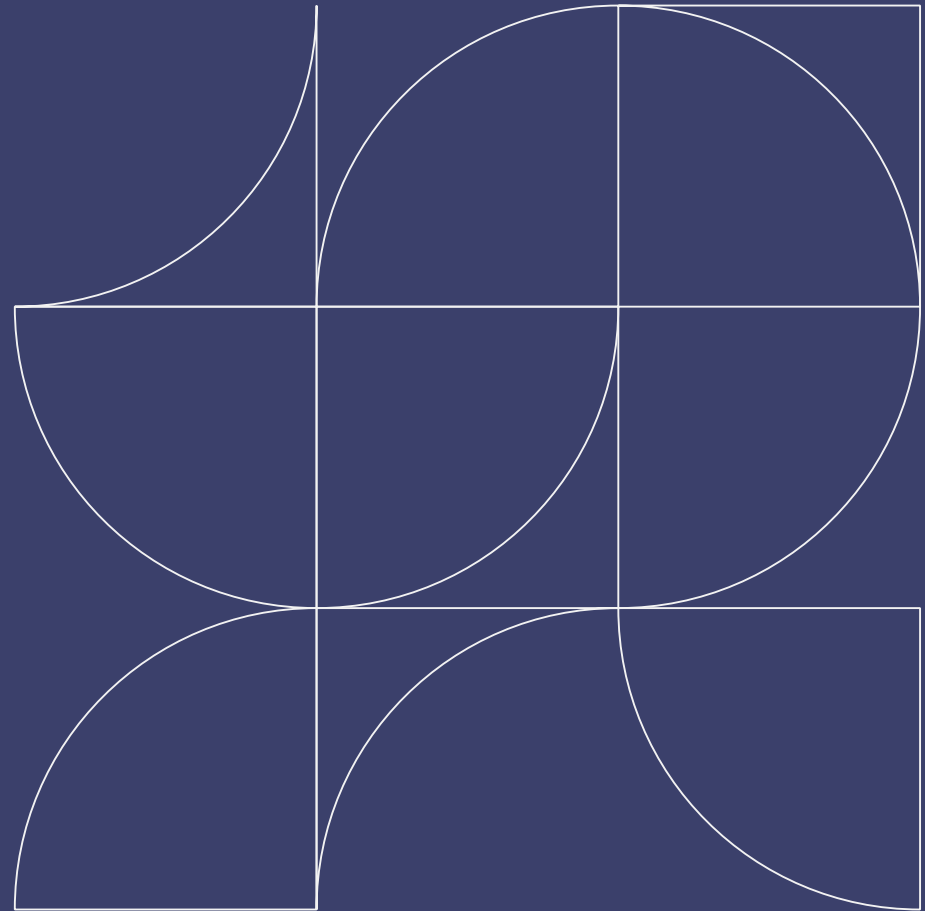
Contemplated Clarifications

- No obligation to create a personnel file
- No obligation to produce new documents beyond records currently maintained
- Covered personnel files would include only records used to determine specified employment matters

The November 8 “Gap Period”

- The enacted law is scheduled to take effect November 8, 2026.
- Any expected Chapter Amendment likely will not be enacted until after the effective date.
- Employers should not assume anticipated revisions suspend or replace the enacted requirements.
- A reasonable approach is to build a good-faith compliance process based on the current text.
- Workflows should remain flexible enough to be revised if amendments or official guidance are issued.
- Employers should document reasonable interpretations of unresolved questions.

Practical Compliance and Documentation Steps



A Defensible Request-Response Workflow

- Intake and date-stamp the written request.
- Assign a responsible owner and calculate the statutory deadline.
- Confirm the requester's identity and employment status.
- Identify systems, custodians, vendors, and archived sources.
- Collect potentially covered records.
- Review for scope, privilege, confidentiality, privacy, and redactions.
- Produce securely and at no cost.
- Preserve the response and delivery record.
- Track the employee's annual review count and any follow-up dispute.

Performance and Discipline Documentation

DO

- Use specific facts, dates, examples, policy references, expectations, and next steps
- Write objectively and professionally
- Align documentation with the ultimate decision
- Route formal discipline through established HR processes

AVOID

- Labels, speculation, unnecessary adjectives, and editorial commentary
- Material inconsistencies across reviews and decisions
- Backfilling documentation after a dispute arises
- Informal shadow files outside established governance

REMEMBER

- The law is not a reason to document less
- Employees may review a broader set of materials
- Distinguish drafts, coaching, investigations, and final decisions
- Coordinate with privilege, retention, and litigation practices

Receiving and Responding to a Written Access Request

1

Route

Promptly route a written communication reasonably requesting personnel records

2

Assign

Central response owner; calculate the five-business-day deadline

3

Collect

Relevant systems, custodians, archives, and vendors

4

Review

Scope, privilege, privacy, confidentiality, and redactions

5

Produce

Securely, at no cost; document delivery

Discovery and Litigation Considerations

- Discovery scope is broader than the statutory definition of a personnel record.
- Content, location, custodians, and actual use may be cited to argue that material qualified as personnel-record information.
- Informal notes, emails, internal memoranda, and investigation materials may become disputed evidence.
- Align personnel-record protocols with legal holds, investigations, privilege, discovery, and record-governance practices.
- Use care in production descriptions and document characterizations; production alone does not establish statutory coverage.

Unionized Workplaces and Existing Procedures

- Review CBAs and established procedures addressing access, review, rebuttal, grievance, and expungement rights
- The statute does not supersede a CBA that provides at least substantially similar access
- Determine whether new request, notice, documentation, or retention procedures may implicate bargaining obligations
- Coordinate statutory response deadlines with contractual grievance and personnel-record procedures
- Identify who will manage overlapping statutory and contractual requests

Practical Steps Before November 8

1

Inventory

Records, systems, custodians, vendors

2

Centralize

Intake point and response owner

3

Build protocol

Scope, privilege, privacy, redactions, delivery log

4

Escalate notices

Formal adverse documents vs. uncertain categories

5

Train

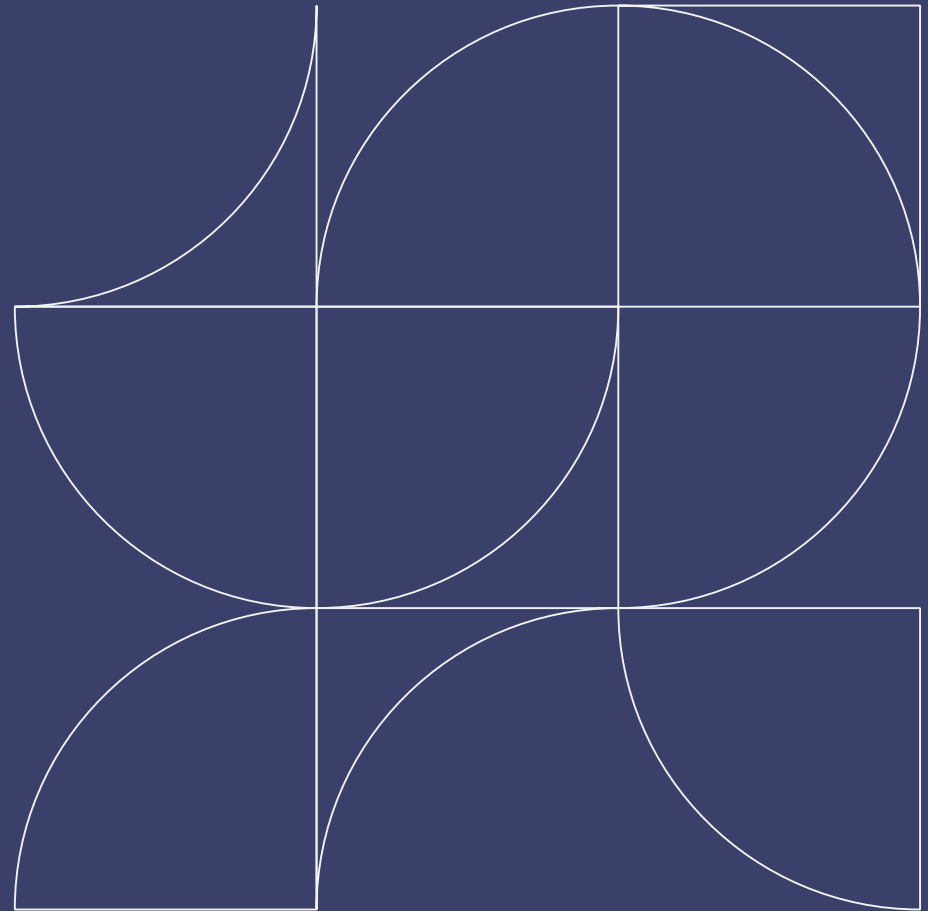
HR, employee relations, legal, managers, payroll, governance

6

Monitor

Amendments, AG guidance, and early enforcement

Questions?



**thank
you**

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